

For the reasons set forth in detail below, it is respectfully requested that the Examiner reconsider the allowability of Claims 1-5. Thus, the rejection is traversed for the following factual and legal reasons, to wit:

- 5 Applicant respectfully request that the Examiner allow substitution of the enclosed new oath, petition, and power recently executed by the inventor.

REMARKS

Oath/Declaration

- 10 1. The inventor changed his address on the original using white-out and was not cognizant of the rule whereby such changes must also be initialed and dated by the applicant and that a mailing address is required for the inventor. Hence, a new oath has been submitted for substitution.
2. The new declaration is believed to be in compliance with 37 CFR 1.67(a). It
15 identifies this application by application number and filing date.
- The mailing address of the inventor is added. An address at which an inventor customarily receives his mail is declared. The mailing address includes the ZIP Code designation.

Claim Rejections - 35 USC § 102

- 20 3. The following quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejection is quoted with underscoring of the pertinent parts.

A person shall be entitled to a patent unless -
25 (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351 (a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
30

Claims 1-2, 4, and 5 were rejected under 35 U.S.C. 102(e) as being anticipated by Levine et al (Levine hereinafter, US PAT-. 6,233,566).

4. The following is quotation of 37 CFR§ 1.131:

37 CFR 1.131 Affidavit or declaration of prior invention.

(a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim... may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. The effective date of a U.S. patent, U.S. patent application publication, or international application publication under PCT Article 21(2) is the earlier of its publication date or date that it is effective as a reference under 35 U.S.C. 102(e). Prior invention may not be established under this section in any country other than the United States, a NAFTA country, or a WTO member country. Prior invention may not be established under this section before December 8, 1993, in a NAFTA country other than the United States, or before January 1, 1996, in a WTO member country other than a NAFTA country. Prior invention may not be established under this section if either:

- (1) The rejection is based upon a U.S. patent or U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 41.203(a) of this title, in which case an applicant may suggest an interference pursuant to § 41.202(a) of this title; or<
- (2) The rejection is based upon a statutory bar.

(b) The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.

5. For purposes of applying Rule 131, the effective filing date of the Kayser application is the date of filing of the provisional, namely, June 20, 1999, since the specification of the provisional supports all of the claims of the application. Thus, the issue presented is what is the issue date or publication date of the Levine et al patent reference? Levine et al. issued on May 15, 2001. This is the effective date of this patent. Thus, the patent issued after the effective date of the application and is therefore not a bar under 35 U.S.C. 102(b). Levine et al. is not based on an international application filed prior to November 29, 2000 and is therefore not subject to the former (pre-AIPA) version of 35 USC 102 (e). Revised 35 USC 102(e) has two separate clauses as printed above:

USC 102(e)(1) is for publications and 35 USC 102 (e)(2) is for U.S. patents. Thus, 35 USC 102(e) (2) is the sole clause applicable to this application.

6. The Rule 131 declaration submitted herewith is respectfully requested to be entered into the record. In this declaration applicant unequivocally establishes a date of invention between November 30, 1985 and May 25, 1995. The applicant's invention therefore occurred prior to the publication date of Levine et al. Hence, Levine et al. is not prior art. The rejection of Claims 1-2, 4, and 5 under 35 U.S.C. 102(e) as being anticipated by Levine et al should be forthwith withdrawn and these claims allowed.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action-.

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 was rejected under 35 U.S.C. 103(a) as being unpatentable over Levine in view of Fraser et al (Fraser hereinafter, US PAT- 5,995,947). Levine et al. has been shown by competent and compelling evidence not to be prior art. Hence, the rejection of Claim 3 as obvious over Levine et al combined with Fraser is traversed. It is requested that the rejection of Claim 3 be withdrawn and that a notice of allowability be issued forthwith for this claim.

Prior Art Cited

9. Applicant has reviewed Tengel et al and has determined that it does not appear to pose a bar to the allowability of applicant's Claims 1 -5. Tengel et al. issued on Aug. 17, 1999. The effective date of Tengel et al. is within one year of applicant's priority date. Although correctly cited as prior art of record, Tengel et al (US PAT: 5,940,812)

was not relied upon and aptly so. The differences between Tengel and the invention recited in claims 1-5 as a whole are remarkable.

9. Neither Tengel nor Tengel combined with Fraser suggests, intimates, or teaches the invention claimed with the clearly defined limitations recited.

10. Re-examination of claims and a notice of allowance for claims 1 - 5 are solicited.

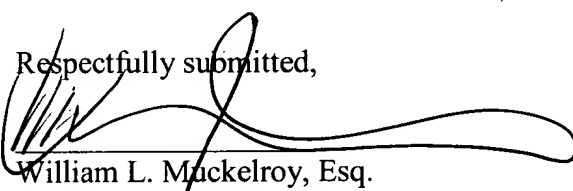
11. Claims 1-5 now clearly recite subject matter patentably distinguishable from the art cited whether taken singly or in combination.

10 12. And, for the record, applicant has filed an application for patent in the Republic of Russia. No additional prior art was cited. That application was recently examined and a notice of allowance has issued. The issue fee has been paid. Applicant is awaiting issuance of the Russian patent. The specification of this application and the Russian application are the same.

15

WLM:imc
Docket 2110.12.99
20 Tel: 609-882-2111
Fax: 609-883-3322

Respectfully submitted,


William L. Muckelroy, Esq.
Attorney for Applicant (s)
Registration No. 26,9610

20

Enclosures: Amendment A, Rule 131 Declaration, Substitute Oath, Certificate of Mailing; Petition for Two-Month Extension with fee via attorney's check for \$225.

25